

COMMENT

NO HABLO INGLÉS: WAIVERS TO THE ENGLISH LANGUAGE REQUIREMENT FOR NATURALIZATION

“No man is a desirable citizen of the United States who does not know the English language.”¹

I. INTRODUCTION

Susana, a plump and smiling forty-five year old woman from Mexico lawfully resides in Nogales, Arizona. She has had her *mica* (greencard) for about ten years, and when asked why she has not applied for citizenship in the United States, she sadly responded in Spanish: “I would like to become a U.S. citizen, but I can’t learn English. My kids tried teaching me. It just won’t get into my head.”² If Susana could speak, read, and write in basic English, she would qualify for naturalization.

Susana is not alone. Around forty percent of the population currently eligible to naturalize report they “speak English ‘not well’ or ‘not at all.’”³ Although this data should be viewed somewhat cautiously, it does indicate that substantial numbers of legal permanent residents may be indefinitely disenfranchised from meaningful political participation in the United States because they have not acquired

1. COMM’N ON NATURALIZATION, REPORT TO THE PRESIDENT, H.R. Doc. No. 59-46 at 11 (1905).

2. Interview with Susana Torres in Nogales, Ariz. (Aug. 14, 2006). In Spanish, Susana Torres explained: “Me gustaría hacerme ciudadana Americana, pero no puedo aprender inglés. Mis hijos trataron de enseñarme, pero no me entra en la cabeza.”

3. Sarah Margon, *Naturalization in the United States*, MIGRATION POL’Y INST. (May 1, 2004), available at <http://www.migrationinformation.org/USFocus/print.cfm?ID=225>.

330 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL [Vol. 37

sufficient proficiency in English.⁴ Should Susana and others in her situation be able to attain U.S. citizenship without knowing English? Could Susana become a model citizen even though she does not know English?

Meaningfully answering these questions necessitates examining the root of the English language requirement and its relationship with citizenship. Because citizenship is an intangible concept, Congress uses proxies for what it means to be a United States citizen.⁵ One such proxy is requiring naturalization applicants to know English. The Department of Homeland Security views citizenship as “a condition of allegiance to, and participation in, a governmental jurisdiction, . . . a pledge of loyalty, [and a] commitment to actively participate in civics and community.”⁶ This characterization translates into a practical requirement that would-be citizens know English to fully participate politically and to culturally assimilate in their communities.⁷ The U.S. Commission on Immigration Reform also emphasizes how fostering participation in the community is a basis for the requirement: “[T]he

4. Only U.S. citizens can serve on juries, vote in federal elections, and become elected to many elected offices. WELCOME TO THE UNITED STATES: A GUIDE FOR NEW IMMIGRANTS, HOMELAND SEC. DEP'T, U.S. CITIZENSHIP & IMMIGR. SERVS., OFFICE OF CITIZENSHIP 90-91 (2005), available at <http://www.uscis.gov/files/article/M-476.pdf>. Interestingly, twenty-two states have granted non-U.S. citizens the right to vote, and today, certain localities such as Takoma Park, Washington, permit non-U.S. citizens to vote at the local level. James B. Raskin, *Legal Aliens, Local Citizens: the Historical, Constitutional and Theoretical Meanings of Alien Suffrage*, 141 U. PA. L. REV. 1391, 1393 (1993); see also *id.* at 1460-67 (providing several examples of non-citizens voting at the local level).

5. In fact, citizenship itself may be viewed “as a proxy, or place-holder, for our deepest commitments to a common life. Citizens, in this view, mutually pledge their trust and concern for each other and their full participation in shared civic and civil cultures.” Peter H. Schuck, *The Re-Evaluation of American Citizenship*, 12 GEO. IMMIGR. L.J. 1, 1 (1997).

6. Eduardo Aguirre, Director U.S. Citizenship and Immigration Servs., Remarks at the Nixon Center: Civic Integration – Citizenship After 9/11 (Nov. 13, 2003) available at http://www.dhs.gov/xnews/speeches/speech_0141.shtm.

7. Although English is not (yet) the official language of the United States, “[a]n English literacy requirement . . . establishes the fact that the United States is an English culture and that its citizens will have to learn English in order to participate fully in it.” Arnold H. Leibowitz, *English Literacy: Legal Sanction for Discrimination*, 45 NOTRE DAME L. REV. 7, 14 (1969) quoted in Juan F. Perea, *Demography and Distrust: an Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269, 338 (1992).

nation is strengthened when those who live in it communicate effectively with each other in English,”⁸ and speaking English is the “most critical of basic skills for successful integration.”⁹ Additionally, English symbolizes American cultural identity; a “common language” is the “glue” holding our country together.¹⁰ President George W. Bush, in a radio address, also expressed this view by stating: “Americans are bound together by our shared ideals, an appreciation of our history, respect for the flag we fly, and an ability to speak and write the English language.”¹¹ A historical review of the English language requirement also sheds light on less honorable underlying rationales for its existence. Indeed, language has served as a discriminatory instrument of exclusion.¹² The requirement inherently favors certain immigrants over others, such as applicants from English-speaking countries, those who already speak English, or graduates from American universities, who will easily meet this requirement; unlike illiterate individuals or people like Susana, who may find that the requirement is a barrier impossible to surmount.¹³

As a proxy for citizenship, the English language requirement is imperfect and does not necessarily advance the policies that officially justify it. Indeed, although the requirement seeks to facilitate and

8. U.S. Commission on Immigration Reform, *Becoming an American: Immigration and Immigration Policy*, 1997 Report to Congress at 25, CENTER FOR IMMIGRATION STUDIES (Sept. 1997) [hereinafter USCIR].

9. *Id.* at 38.

10. Paul McKinley, Senator and cosponsor of the Iowa English Language Reaffirmation Act, *cited in* 83 No. 29 Interpreter Releases 1629, 1630 (July 2006).

11. President George W. Bush, *quoted in* Ellen Goodman, Op-Ed., *Guests at the Melting Pot*, THE BOSTON GLOBE, May 19, 2006, at A19.

12. *See* Perea, *supra* note 7, at 357-59; *see also* Leslie V. Dery, *Disinterring the “Good” and “Bad Immigrant”: a Deconstruction of the State Court Interpreter Laws for Non-English Speaking Criminal Defendants*, 45 U. KAN. L. REV. 837, 851 (1997); *cf.* Center for Immigration Studies, *Are Immigration Preferences for English-Speakers Racist?* (Apr. 1996) (arguing that an English requirement does not discriminate against potential immigrants because knowing a language is an acquired, not an inherent characteristic, and most English speakers overseas are not white); Antonio J. Califa, *Declaring English the Official Language: Prejudice Spoken Here*, 24 HARV. C.R.-C.L. L. REV. 293, 334 (1989) (“Language, then, has been used and recognized as a proxy for national origin.”).

13. Stephen Legomsky states that the greatest obstacle to naturalization is the English language requirement. STEPHEN H. LEGOMSKY, IMMIGRATION AND REFUGEE LAW AND POLICY 1282 (4th ed. 2005).

332 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL [Vol. 37]

promote political and societal participation, English-speaking naturalized citizens may dodge jury duty, abstain from voting, or choose to communicate in a language other than English in their daily lives.¹⁴ Congress, perhaps recognizing the proxy's imperfect nature, has exempted certain applicants who are entitled to become citizens without knowing English. The exemptions, or waivers, cover certain disabled applicants, certain military servicemen and women, and certain elderly applicants who have resided for extended periods of time in the United States.¹⁵ Although the current English requirement is flawed, it is here to stay.

This Comment proposes a new waiver to mitigate the language requirement's inherent defects. The proposed waiver, based on successfully completing a language-training program, would broaden political participation and encourage lawful permanent residents to participate in their communities, thus furthering the legitimate rationales underlying the English language requirement, while also recognizing that learning English is a slow and difficult process. Part II of this Comment explores the historical background of the naturalization English language requirement and shows how language demands on would-be citizens have increased as a result of nativist pressures and national security concerns. Part III presents the current language requirement and sets forth the various exemptions based on military service, disabilities, and age and residency. Part IV focuses on the current debate over the English language requirement by discussing current nativist and national security concerns, and questions the necessity of the English language requirement for naturalization by examining scholarship that advocates relaxing or even eliminating it. Part V proposes facilitating the access to naturalization for non-English speaking legal permanent residents who have demonstrated a willingness to learn English by successfully completing a standardized English course. At the end of the program, participants would receive a diploma, which would waive the English language portion of the citizenship exam, and they would be eligible to take the civics exam in their native language. Part V also examines the benefits of, and possi-

14. For instance, a naturalized U.S. citizen may choose to move to Puerto Rico and never speak English.

15. *See infra* Part III.C.

ble objections to, this waiver and discusses its implementation based on similar programs in European countries.

II. HISTORICAL BACKGROUND FOR THE ENGLISH LANGUAGE REQUIREMENT IN U.S. NATURALIZATION LAW

In 1870, Congress passed a naturalization act, which conferred citizenship to “any ‘free white person’ who resided for two years within the United States and for at least one year in the state where he sought admission, proving his ‘good character’ and taking an oath to ‘support the Constitution of the United States.’”¹⁶ At that time, and for more than one hundred years afterwards, people could become U.S. citizens without knowing English.¹⁷ Today, not only must naturalization applicants speak basic English, they must also demonstrate their ability to *read* and *write* it. The evolution of the naturalization English language requirement can be traced to two potent driving forces: nativism and national security.¹⁸

A. *The Effect of Nativism on the Development of the English Language Requirement*

In 1906, “the most comprehensive naturalization legislation in U.S. history” was enacted.¹⁹ The 1906 Act established the requirement

16. JAMES H. KETTNER, *THE DEVELOPMENT OF AMERICAN CITIZENSHIP, 1608-1870*, 236 (1978); see also Peter J. Spiro, *Questioning Barriers to Naturalization*, 13 *GEO. IMMIGR. L.J.* 479, 489-91 (1999) (detailing the history of the English language requirement). The country’s naturalization policy thus originally excluded Native Americans, free blacks, and slaves from citizenship. After the Civil War, Congress declared that all persons born in the United States are U.S. citizens with the exception of Native Americans, who became citizens two years later, when the Fourteenth Amendment provided that *all* persons born in the United States are citizens. African-Americans did not become eligible for naturalization until 1870. See BERNADETTE MAGUIRE, *IMMIGRATION: PUBLIC LEGISLATION AND PRIVATE BILLS* 181 (1997). Interestingly, the residency period requirement was increased to five years in 1795, increased to fourteen years due to national security concerns when war with France seemed imminent in 1798, and again reduced to five years in 1802. KETTNER, *supra*, at 242-46.

17. Spiro, *supra* note 16.

18. See *infra* Part II.A-B.

19. Spiro, *supra* note 16, at 489.

that naturalization applicants speak the English language.²⁰ This requirement of oral competency in English passed despite vociferous opposition in the House of Representatives, which recognized that immigrants' advanced age, lack of educational opportunities, and long working-hours would prevent potentially good immigrants from having the time or skills to learn English.²¹ Advocates, however, believed that immigrants had ample opportunity to learn English in the five-year waiting period before they could apply for citizenship,²² and that the requirement would foster assimilation²³ and "improve the 'quality' of naturalized citizens."²⁴

Nativism explains the establishment of an English oral competency requirement to naturalize. Americans developed a negative sentiment in the 1890's against non-English speaking immigrants due to rapid growth of immigration from southern and eastern Europe and sought to exclude undesirable immigrants by increasing the requirements for naturalization.²⁵ Nativists also proposed a literacy requirement for those seeking admission to the United States as yet another

20. Naturalization Act of 1906, ch. 3592 § 8, 34 Stat., 596, 599 (1906). Although the 1906 Naturalization Act only required that applicants speak English, some federal courts subsequently imposed, *sua sponte*, an English literacy requirement as a prerequisite to ensure applicants had the necessary attachment to the principles of the Constitution. See *Petition of Katz*, 21 F.2d 867, 867-68 (E.D. Mich. 1927) ("The court holds . . . that it is well within the court's discretion to require . . . that an applicant for citizenship . . . display some ability to read the English language to the end that the alien familiarize himself with our Constitution, our laws and our customs."); cf. *In re Rodriguez*, 81 F. 337, 355 (W.D. Tex. 1897) (finding that an illiterate Mexican national who only spoke Spanish satisfied the attachment to the Constitution requirement because he was a "very good man, peaceable and industrious, of good moral character, and law abiding to a 'remarkable degree'").

21. Angela McCaffrey, *Hmong Veterans' Naturalization Act: Precedent for Waiving the English Language Requirement for the Elderly*, 19 GEO. IMMIGR. L.J. 495, 518 (2005); Gerald L. Neuman, *Justifying U.S. Naturalization Policies*, 35 VA. J. INT'L L. 237, 263 (1994).

22. Neuman, *supra* note 21, at 263.

23. McCaffrey, *supra* note 21, at 517.

24. Perea, *supra* note 7, at 337.

25. Califa, *supra* note 12, at 297; Perea, *supra* note 7, at 333; see Joe R. Feagin, *Old Poison in New Bottles: The Deep Roots of Modern Nativism*, in IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES 13, 24-25 (Juan F. Perea ed., 1997).

means to exclude these ethnicities, but such a requirement was vetoed on multiple occasions.²⁶

Measures to reduce unwanted immigration appeared in other arenas of immigration policy, such as the passage of the Chinese Exclusion Act by Congress in 1882 to exclude Chinese laborers from entering the country and deny Chinese residents naturalization privileges.²⁷ Nativist concerns found further expression in immigration policy with the imposition of national quotas by Congress in 1924, “based on the composition of the population as it had been in 1890, before the great influx of ‘new immigrants’ from southern and eastern Europe.”²⁸ Nativist pressures successfully led to the English oral competency requirement for naturalization, but efforts to require written competency failed until national security concerns prompted the introduction of English literacy as a requirement to naturalize.

B. The Effect of National Security on the Development of the English Language Requirement

Concerns for national security have intermittently led to suspicion of foreigners and enactment of language-restrictive measures.²⁹ For example, during a “language panic of World War I,”³⁰ Section 19 of the Trading with the Enemy Act, passed in June 1917, sought to eliminate foreign-language publications connected to the War unless appropriate translations were provided:

It shall be unlawful for any person, firm, corporation, or association, to print, publish, or circulate, or cause to be printed, published, or circulated in any foreign language, any news item, editorial or

26. Perea, *supra* note 7, at 333-34.

27. See generally Gabriel J. Chin, *Chae Chan Ping and Fong Yue Ting: The Origins of Plenary Power*, in IMMIGRATION STORIES 7, 8 (David A. Martin & Peter H. Schuck, eds., 2005). *Chae Chan Ping v. United States* (Chinese Exclusion Case), 130 U.S. 581, 609 (1889) (upholding the Chinese Exclusion Act); see also *Fong Yue Ting v. United States*, 149 U.S. 698, 699 n.1, 732 (1893) (upholding the 1892 act “prohibiting the coming of Chinese persons into the United States”).

28. Kenneth L. Karst, *Paths to Belonging: The Constitution and Cultural Identity*, 64 N.C. L. REV. 303, 311 (1986).

29. See *infra* Part II.B.

30. DENNIS BARON, *THE ENGLISH-ONLY QUESTION: AN OFFICIAL LANGUAGE FOR AMERICANS?* 107 (1990).

336 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL [Vol. 37

other printed matter, respecting the Government of the United States, or of any nation engaged in the present war, its policies, international relations, the state or conduct of the war, or any matter relating thereto: *Provided*, That this section shall not apply to any print, newspaper, or publication where the publisher or distributor . . . has filed with the postmaster at the place of publication, in the form of an affidavit, a true and complete translation of the entire article containing such matter proposed to be published . . . in plain type in the English language.³¹

Several states required that teachers be citizens and prohibited students from speaking languages other than English at school.³² In Iowa, language restrictions went so far as to require “the use of English in all telephone conversations, schools, and church services”³³ A measure to deport aliens “who did not apply for citizenship or learn English,”³⁴ which was introduced in Congress but did not pass, also reflects the interrelationship between language and concerns about aliens’ loyalty during war and its aftermath.³⁵ In 1920, a proposal to provide federal aid to states, which required non-English speaking aliens under the age of forty-five to become literate in English, initially passed the Senate, but was struck down in the House of Representatives.³⁶

In the McCarthy era, national security concerns pervaded society and a growing distrust of the loyalty not only of aliens, but of fellow Americans as well, resulted in raising the language hurdle to naturalize.³⁷ Indeed, the Internal Security Act of 1950 added an English liter-

31. Trading with the Enemy Act of 1917, ch. 106, § 19, 40 Stat. 411, 425-26 (1917), *quoted in* BARON, *supra* note 30, at 108.

32. See Mark L. Adams, *Fear of Foreigners: Nativism and Workplace Language Restrictions*, 74 OR. L. REV. 849, 859-60 (1995).

33. *Id.* at 859.

34. *Id.* at 861.

35. See Adams, *supra* note 32, at 859-61 (1995). See generally BARON, *supra* note 30, at 107-12.

36. BARON, *supra* note 30, at 141-42. The proposal required students to attend two hundred hours of English-language instruction a year until they passed an English examination. The proposal also applied to all Native American illiterates under the age of twenty-one. *Id.*

37. See Schuck, *supra* note 5, at 2.

acy requirement for naturalization.³⁸ The Act required naturalization applicants to demonstrate “an understanding of the English language, including an ability to read, write, and speak words in ordinary usage in the English language”³⁹ This literacy requirement also sought to exclude unwanted immigrants, this time anti-American aliens.⁴⁰ A Senate judiciary report discussed the rationale for the English literacy requirement; specifically “that anti-American and subversive activities are more easily carried on among non-English-speaking groups of aliens than among those who are thoroughly conversant with our language.”⁴¹ The bill’s sponsor, late Senator Pat McCarran, stated that congressional investigations of foreign-language publications revealed that “a number” of them “not only follow[ed] the line of the Communist party, but [were] actually controlled by the Communist party or its fronts.”⁴² This Communist concern resulted in the creation of a new hurdle to the English language requirement, literacy; as well as the ban of members of the Communist Party from naturalization for failing to meet the required level of allegiance to the Constitution.⁴³

As discussed above, the two major forces driving the English language requirement were (1) a desire to limit immigration from Southern and Eastern Europe and (2) patriotic concerns responding to the Communist threat. Today, concern over illegal immigration and national security in the wake of September 11th has once again linked

38. Internal Security Act of 1950, ch. 1024, § 304, Pub. L. 831, 64 Stat. 987, 1018 (1950) (amending § 304 of the Nationality Act of 1940) (codified as amended in scattered sections of 50 U.S.C.).

39. *Id.* The requirements are essentially the same today.

40. McCaffrey, *supra* note 21, at 520.

41. S. Rep. No. 1515, 81st Cong., 2d Sess. 701 (1950) *cited in* Ricardo Gonzalez Cedillo, *A Constitutional Analysis of the English Literacy Requirement of the Naturalization Act*, 14 ST. MARY’S L.J. 899, 928-29 (1983).

42. Patrick McCarran, *The Internal Security Act of 1950*, 12 U. PITT. L. REV. 481, 511 (1951), *quoted in* Peter W. Schroth, *Section I: Language and Law*, 46 AM. J. COMP. L. 17, 37 n.97 (1998). Senator McCarran cited as evidence for his allegations that Communists controlled a number of foreign language media outlets the testimony of one witness who testified that two of those newspapers were under Communist control. Perea, *supra* note 7, at 339 n.392. As of 1998, there were over one thousand foreign-language newspapers in the United States. Schroth, *supra*, at 27 n.97

43. MAGUIRE, *supra* note 16, at 196.

patriotism to knowing English, as evidenced by the proposed bills discussed in Part IV.

III. THE ENGLISH LANGUAGE REQUIREMENT TODAY

A. *General Requirements for Naturalization*

The Constitution gives Congress the power to establish a “Uniform Rule of Naturalization.”⁴⁴ Thus, Congress has the authority to institute the conditions precedent to naturalization.⁴⁵ In order to apply for naturalization in the absence of waivers, a lawfully-admitted legal permanent resident over eighteen years old must generally satisfy the following requirements: (1) a five-year⁴⁶ continuous residency,⁴⁷ (2) proof of good moral character,⁴⁸ (3) knowledge of the English language,⁴⁹ and (4) knowledge of U.S. government and history.⁵⁰

44. U.S. CONST. art. I, § 8, cl. 4.

45. See *United States v. Bergmann*, 47 F. Supp. 765, 766 (S.D. Cal. 1942); *In re Tanner*, 253 F. Supp. 283, 285-86 (D. Colo. 1966); *In re Quintana*, 203 F. Supp. 376, 378 (S.D. Fla. 1962); *Trujillo-Hernandez v. Farrell*, 503 F.2d 954 (5th Cir. 1974) (holding that a challenge to Congress’ power to establish conditions precedent to naturalization was non-justiciable); *Carmona v. Sheffield*, 325 F. Supp. 1341 (N.D. Cal. 1971) (finding that Congress, not the courts, is the appropriate forum to decide the extent of special consideration to be given to naturalization applicants).

46. The period is reduced to three years for spouses of U.S. citizens. See *Immigration & Nationality Act*, 8 U.S.C. § 1430(a) (2000).

47. *Id.* § 1427(a)(1).

48. *Id.* § 1427(a)(3). This requirement includes an affirmative showing of attachment to the principles of the Constitution. *Id.*

49. *Id.* § 1423(a)(1).

50. *Id.* § 1423(a)(2). Typical questions include: “Where is the White House located,” “Who is the President of the United States today,” and “Name one right or freedom guaranteed by the first Amendment.” HOMELAND SEC. DEP’T, U.S. CITIZENSHIP & IMMIGR. SERVS., OFFICE OF CITIZENSHIP, SAMPLE U.S. HISTORY AND GOVERNMENT QUESTIONS, <http://www.uscis.gov/portal/site/uscis> (click on “Education & Resources;” then follow “Civics and Citizenship Study Materials” hyperlink) (last visited Mar. 31, 2007). In addition, applicants must declare an oath during the naturalization ceremony:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will

B. Particulars of the Current English Language Requirement

The English language requirement demands an elementary level of understanding, reading, and writing of the English language.⁵¹ Applicants meet this standard if they can read or write simple words and phrases in English.⁵²

On the naturalization exam, applicants are tested in English on the history and principles of the United States, and they must write and speak a sentence in simple English.⁵³ Applicants fail to “demonstrate the capacity to speak English in connection with a requirement of attachment to principles of the Federal Constitution” when they are only able to “mumble a few common English words and banal expressions in a foreign accent, and to understand a few simple questions, or directions.”⁵⁴ Applicants pass the English test if the examiner is satisfied that they can read a sentence and write another at the literacy level of an elementary school student, and applicants have three opportunities to pass both the reading and writing tests.⁵⁵ Examples of the types of sentences an applicant may be asked to speak aloud or write include: “It is important for all citizens to vote,” “The boy threw a ball,” “I go to work everyday,” or “You drink too much coffee.”⁵⁶

bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform non-combatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely without any mental reservation or purpose of evasion; so help me God.

Oath of Allegiance, 8 C.F.R. § 337 (2002).

51. See Immigration & Nationality Act, 8 U.S.C. § 1423(a)(1).

52. *Id.*; see also, e.g., *Kwok Wing Leung v. I.N.S.*, 642 F. Supp. 607 (E.D.N.Y. 1986).

53. See McCaffrey, *supra* note 21, at 514.

54. *In re Swenson*, 61 F. Supp. 376, 376-77 (D. Or. 1945).

55. Memorandum from Richard L. Skinner, Acting Inspector Gen., on Citizenship Test Redesign to Eduardo Aquirre, Dir. of U.S. Citizenship and Immigration Servs. (June 14, 2005), available at http://www.dhs.gov/xoig/assets/mgmt/rpts/OIG_05-25_Jun05.pdf. “[Q]uestions to the applicant shall be repeated in different form and elaborated, if necessary, until the officer conducting the examination is satisfied that the applicant either fully understands the questions or is unable to understand English.” 8 C.F.R. § 335.2(c) (2006).

56. HOMELAND SEC. DEP’T, U.S. CITIZENSHIP & IMMIGR. SERVS., OFFICE OF CITIZENSHIP, SAMPLE SENTENCES FOR WRITTEN ENGLISH TESTING,

340 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL [Vol. 37]

In 1997, the U.S. Commission on Immigration Reform (USCIR) suggested improvements to the naturalization exam in its report to Congress and recommended standardizing the English and civics tests to evaluate a common core of information.⁵⁷ The USCIR suggested contracting with one nationally recognized and well-respected testing service to improve the federal government's oversight and to ensure the test's quality.⁵⁸ Other proposals included expediting the swearing-in ceremonies and making the oath more comprehensible, solemn, and meaningful.⁵⁹

In 2001, the Immigration and Nationality Service (INS), now the U.S. Citizenship and Immigration Services (USCIS), began redesigning the naturalization civics and English tests. In regards to the English exam, the INS concluded that testing procedures were not standardized and that the test was unevenly administered and failed to "effectively determine if a naturalization applicant has a meaningful understanding of the English language."⁶⁰ A study conducted in 1997 found an absence of standardized procedures, including those in "test content, testing instruments, test protocols, or scoring system."⁶¹ USCIS has redesigned the naturalization exam to make it more meaningful and standardized, theoretically seeking to maintain its current level of difficulty.⁶² The new civics exam is designed to ensure immi-

<http://www.uscis.gov/portal/site/uscis> (type "sample sentences" in the search window; then follow "Sample Sentences for Written English Testing" hyperlink) (last visited Mar. 31, 2007).

57. See USCIR, *supra* note 8, at 46.

58. *Id.* at 55. At that time, six testing organizations administered the English and civics tests. Carlos Ortiz Miranda, *United States Commission on Immigration Reform: the Interim and Final Reports*, 38 SANTA CLARA L. REV. 645, 676 (1998); see also Austin T. Fragomen & Steven C. Bell, *Immigration Fundamentals* § 11.4.1 PRACTICING LAW INSTITUTE (4th ed. 2006). INS resumed internal testing in 1998 due to allegations of fraud in the administration of the examinations. Bill Ong Hing, *The Emma Lazarus Effect: A Case Study in Philanthropic Revitalization of the Immigrant Rights Community* (presentation transcript), in 15 GEO. IMMIGR. L.J. 47, 65 (2000); see also Brooke A. Masters, *Citizenship of 100-Plus in Jeopardy; Indictment Accuses Four Test-Givers of Falsifying Results*, WASH. POST, Mar. 5, 1998, at D04.

59. USCIR, *supra* note 8, at 48-51.

60. Memorandum from Richard L. Skinner, *supra* note 55.

61. *Id.*

62. Yvonne Abraham, *City to Try an Updated Citizenship Test Soon*, BOSTON GLOBE, Nov. 13, 2006, at B1.

grants understand and share American values by focusing on “the Bill of Rights and the meaning of democracy,” rather than asking trivia questions such as “What are the colors of the flag?”⁶³ Applicants must answer six of ten selected questions correctly from a closed universe of one hundred questions.⁶⁴ A pilot program began in Winter 2006 in ten cities, and will be administered nationwide in 2008.⁶⁵

Although most naturalization applicants must satisfy the English language requirement described above, certain applicants are fully or partially exempted from it.

C. Waivers to the English Language Requirement

Congress has the plenary power to implement conditions precedent to naturalization as well as exemptions to those conditions.⁶⁶ Congress indicates that an individual can be a good citizen without knowing English, as evidenced by the various exemptions to the English language requirement discussed below. Thus, it is within Congress’s power to implement the proposed waiver based on the completion of a language-training program.

1. Waiver Based on Military Service

First, all the requirements to become a U.S. citizen do not carry equal value to Congress. A language waiver based on military service to the United States shows that aliens’ attachment and loyalty to the United States may outweigh their knowledge of English.⁶⁷ For instance, the Second War Powers Act temporarily waived the English requirement for a brief period during and after World War II for those who rendered military service to the United States.⁶⁸ Additionally, the

63. *Id.*

64. *Id.*

65. *Id.*

66. U.S. CONST. art. I, § 8, cl. 4.

67. In a comprehensive review of the early development of naturalization policy, James H. Kettner notes “legislators were most concerned with insuring a [naturalization] candidate’s sincere commitment to the basic values and principles of the republic.” KETTNER, *supra* note 16, at 247.

68. McCaffrey, *supra* note 21, at 511.

Hmong Veterans' Naturalization Act waived the English language requirement for

soldiers who were admitted to the United States as refugees from Laos and who "served with a special guerrilla unit, or irregular forces, operating from a base in Laos in support of the U.S. military at any time during a period beginning February 28, 1961, and ending September 18, 1978."⁶⁹

By recognizing this exemption, Congress demonstrates that it is not essential for an individual to know English in order to be a good citizen. However, this exception applies to few applicants; in fact, most legal permanent residents in the military benefit from a fast-track path to citizenship,⁷⁰ but are still required to pass the English language test.⁷¹

2. Waiver Based on Disability

Second, the English language requirement does not apply to people who cannot comply due to a physical or developmental disability or mental impairment.⁷²

The terms of this waiver are defined in the legislative history to the 1994 INA Act:

An individual who is developmentally disabled is one who shows delayed development of a specific cognitive area of maturation, i.e. reading, language, or speech, resulting in intellectual functioning so impaired as to render the individual unable to participate in the normal testing procedures for naturalization. This is not an acquired disability, but one whose onset occurred before the 18th birthday. An individual who is mentally disabled is one for whom there is a

69. *Id.* at 496-97 (citing The Hmong Veterans' Naturalization Act of 2000, Pub. L. No. 106-207 § 2(1) A-B, 114 Stat. 316 (2000) (codified as amended at 8 U.S.C. § 1423 (2000))).

70. Adriana Garcia, *Many Taking Military Shortcut to U.S. Citizenship*, NEWSDESK.ORG, Oct. 16, 2006, <http://www.newsdesk.org/archives/004023.html>.

71. See H.R. 3911, 109th Cong. (2005), introduced on September 27, 2005, by Jim Gerlach (proposing to exempt members of the Armed Forces from the English language requirement), reprinted in REPORT AND ANALYSIS OF IMMIGRATION AND NATIONALITY LAW, 82 No. 38 Interpreter Releases 1604, 1605 (Oct. 2005).

72. Immigration & Nationality Act, 8 U.S.C. § 1423(b)(1).

primary impairment of the brain function, generally associated with an organic basis upon which diagnosis is based, resulting in an impairment of intellectual functions, including memory, orientation or judgment. This definition does not include individuals whose mental disability is not the result of a physical disorder. An individual who is physically disabled is one who has a physical impairment that substantially limits a major life activity.⁷³

For example, this waiver applies to naturalization applicants who are legally blind or deaf.⁷⁴ However, applicants suffering from temporary conditions or conditions caused by the use of illegal drugs are excluded.⁷⁵ In 1994, Congress extended the waiver to cover both the English and civics requirements.⁷⁶ The disability waiver excludes applicants who cannot learn English due to their age or mental or emotional blocks.⁷⁷ In *In re Blasko*, a legal permanent resident from Hungary, who filed for naturalization when he was sixty-three years old after residing in the United States for ten years, failed his citizenship exam because he was unable to speak English and to show an understanding of the U.S. government.⁷⁸ After attending night school for a year, Blasko once again failed the citizenship exam because he could not write English.⁷⁹ The Third Circuit Court of Appeals rejected his argument that age constituted a disability because there was no statutory basis to challenge the requirement based on age.⁸⁰ To come back to Susana's case, although she has unsuccessfully tried to learn English, she would be ineligible for this waiver because age alone is not a disability under the INA.

73. H.R. Rep. No. 103-387, at 5-6 (1993) *cited in* CHARLES GORDON, ET AL., 7 IMMIGRATION LAW AND PROCEDURE § 95.03[3] (Bender 2006).

74. *See In re Sandolo*, 307 F. Supp. 221, 221-22 (D. Conn. 1969) (addressing blindness); *In re Vazquez*, 327 F. Supp. 935, 936 (S.D.N.Y. 1971) (addressing deafness).

75. H.R. Rep. No. 103-387, at 5-6 (1993) *cited in* GORDON, *supra* note 73, § 95.03[4][b].

76. *See* 8 U.S.C. § 312(a)(2) *cited in* McCaffrey, *supra* note 21, at 524-25.

77. GORDON, *supra* note 73, § 95.03.

78. *See In re Blasko*, 466 F.2d 1340, 1341 (3d Cir. 1972).

79. *Id.*

80. *See id.*

3. Waiver Based on Age and Residency in the United States

Third, the English language requirement does not apply to persons who are at least fifty years old and have resided as legal permanent residents in the United States for twenty years or more (the “50/20 exception”) nor to persons who are at least fifty-five years old and who have been legal permanent residents for fifteen years or more (the “55/15 exception”).⁸¹ Furthermore, applicants who are over sixty-five years of age and have resided as lawful permanent residents for twenty years in the United States are given special consideration and allowed to take a simpler version of the civics test in their native language.⁸²

This waiver, based on a combination of age and residency significantly demonstrates that Congress recognizes that some individuals, like the elderly, may experience greater difficulty in learning another language. However, this age-residency waiver does not appropriately address the discriminatory impact of the English language requirement because eligibility is often postponed for decades, disenfranchising lawful permanent residents who are otherwise qualified to apply for citizenship. Therefore, it is very difficult to take advantage of this waiver. Susana, for instance, would have to wait another ten years to become eligible for this waiver because she is forty-five years old and has been a legal permanent resident for ten years.⁸³ This means by the time Susana becomes eligible for a waiver, she will have resided twenty years in the United States.⁸⁴ Susana will thus remain disenfranchised from the political process for decades, barred from voting and jury service, in addition to other restrictions.⁸⁵ As discussed in the

81. Immigration & Nationality Act, 8 U.S.C. § 1423(b)(2)(A)&(B); GORDON, *supra* note 73, § 95.03[4][b]. The first waiver was passed in 1952 and the latter was added in 1990. GORDON, *supra* note 73, § 95.03[4][b] nn.51-52.

82. Immigration & Nationality Act, 8 U.S.C. § 1423(b)(3); GORDON, *supra* note 73, § 95.03[4][b].

83. Interview with Susana Torres in Nogales, Ariz. (Aug. 14, 2006).

84. *See id.*

85. The Constitution of the United States establishes the right to a jury trial. U.S. CONST. art. III, § 2, cl. 3; U.S. CONST. amends. VI & VII. The states set the terms for participation on a jury and include citizenship as a requirement for jury service. For example, California’s citizenship requirement for jury participation is found in its code of civil procedure. CAL. CODE CIV. PRO. § 203 (West 2000). Non-English speakers could participate as jurors for trials conducted in English through

introduction, the language requirement is a proxy for citizenship, rather than the *sine qua non* of citizenship.⁸⁶ Because the language requirement is merely one way to achieve the abstract state of “Americanization,” Congress should give more value to other proxies that are equally or more significant, such as commitment and loyalty to the United States, its values, and its institutions; and encourage greater political participation by enfranchising people like Susana to benefit democracy in the United States.

Waivers to residency requirements illustrate the authority and willingness of Congress to dispense with certain hurdles that keep applicants from fulfilling the English language requirement, suggesting that this requirement “functions more as an [sic] proxy for attachment to the United States than as an independent hurdle.”⁸⁷ Therefore, Congress should enact the proposed waiver because Congress has the power to do so and because completing a language-training program would fulfill the requirement’s underlying policies and decrease its discriminatory effects.

IV. MODERN DEBATE ON THE ENGLISH LANGUAGE REQUIREMENT FOR NATURALIZATION

A. *Strengthening the English Language Requirement*

Nativist concerns and national security rhetoric survive to this day. The interconnection between language, aliens, and national security did not disappear in the 20th Century, as evidenced by the view of Central Intelligence Agency Director, William Colby, in 1978 that Mexican immigration represented “the single greatest security threat facing the United States, greater even than the threat from the Soviet Union,” which could result in a separatist movement in the southwest-

the aid of interpreters. The right to vote is also set forth in the Constitution and applies only to citizens who meet other eligibility requirements. U.S. CONST. amend. XXIV, § 1.

86. See *supra* notes 6-15 and accompanying text.

87. Joren Lyons, Comment, *Mentally Disabled Citizenship Applicants and the Meaningful Oath Requirement for Naturalization*, 87 CAL. L. REV. 1017, 1030 (1999) (discussing waivers to the residency requirement).

ern United States.⁸⁸ A Council on Interamerican Security paper also expresses a modern national security concern:

“Hispanics in America today represent a very dangerous and subversive force that is bent on taking over our nation’s political institutions for the purposes of imposing Spanish as the official language of the U.S. and indeed of the entire Western Hemisphere. . . . If we desire to preserve our unique culture and the primacy of the English language, then we must so declare rather than sitting idly by as a de facto nation evolves.”⁸⁹

Language is therefore a “badge of true Americanism, and anything less than fluency in English—a foreign accent, let alone maintenance of a minority tongue—is perceived to threaten national security and subvert the national ideal.”⁹⁰

Modern expressions of nativism can be traced back to the advent of the Official English movement (“Official English”) in the early eighties, when the late Senator S.I. Hayakawa founded the non-profit institution *U.S. English* and proposed a constitutional amendment to designate English as the official language of the United States.⁹¹ *U.S. English* continues to lobby for state and federal amendments declaring English the official language to promote national unity.⁹² Many sup-

88. Néstor P. Rodríguez, *The Social Construction of the U.S.-Mexico Border*, in IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES 223, 227 (Juan F. Perea ed., 1997).

89. Feagin, *supra* note 25, at 34.

90. BARON, *supra* note 30, at 7.

91. SANDRA DEL VALLE, LANGUAGE RIGHTS AND THE LAW IN THE UNITED STATES: FINDING OUR VOICES 55 (2003). Interestingly, Hayakawa was himself an immigrant. *Id.* at 56. See also Michael W. Valente, *Comment, One Nation Divisible by Language: An Analysis of Official Language Laws in the Wake of Yniguez v. Arizonans for Official English*, 8 SETON HALL CONST. L.J. 205, 207-09 (1997). U.S. English continues in its efforts to declare English the official language of the United States. See *U.S. English, Inc.*, Facts Sheets: About *U.S. English*, <http://www.us-english.org/inc/official/fact%5Fsheets/about.asp> (last visited Mar. 28, 2007).

92. Adams, *supra* note 32, at 864-65. In response to English-Only laws, one border town in Texas, El Cenizo, passed an ordinance making Spanish the language for official government meetings. Kenya Hart, *Defending Against a “Death by English”*: *English-Only, Spanish-Only, and a Gringa’s Suggestions for Community Support of Language Rights*, 14 BERKELEY LA RAZA L.J. 177, 180 (2003). For a comprehensive analysis of the constitutionality of the ordinance, see María Pabón López, *The Phoenix Rises From El Cenizo: A Community Creates and Affirms a La-*

porters of Official English also seek to abolish “the use of languages other than English by the United States government”⁹³ such as multi-lingual voting ballots.

Official English has had some success (more symbolic than anything else) at the state level, as twenty-seven states including California “have adopted some form of ‘English-only’ laws.”⁹⁴ California amended its constitution to adopt English as the official state language and “prohibit[] actions by the legislature which diminish or ignore the role of English as the state’s common language.”⁹⁵ Other states such as Louisiana, Oklahoma, and Wyoming have defeated similar proposals.⁹⁶

Efforts to make English the official language of the United States at the federal level have yet to succeed. In 1989, four resolutions were introduced in Congress “to establish English as the official language of the United States.”⁹⁷ Today, several acts seek to impose more stringent English requirements for naturalization, including the English Language Unity Act of 2005, sponsored by Congressman Steve King, which recommends adopting English as the official language of the United States and requiring naturalization applicants to “read and understand generally the English language text of the Declaration of Independence, the Constitution, and the laws of the United States.”⁹⁸

tino/a Border Cultural Citizenship Through its Language and Safe Haven Ordinances, 78 DENV. U. L. REV. 1017, 1021 (2001).

93. Audrey Daly, Comment, *How to Speak American: In Search of the Real Meaning of “Meaningful Access” to Government Services for Language Minorities*, 110 PENN ST. L. REV. 1005, 1011 (2006).

94. James Leonard, *Bilingualism and Equality: Title VII Claims for Language Discrimination in the Workplace*, 38 U. MICH. J.L. REFORM 57, 69 (2004).

95. Adams, *supra* note 32, at 867. See CAL. CONST. art III, § 6(c).

96. Adams, *supra* note 32, at 867.

97. *Id.* at 868.

98. David Michael Miller, Note, *Assimilate Me: It’s as Easy as (Getting Rid of) Uno, Dos, Tres*, 74 UMKC L. REV. 455, 484-85 (2005) (quoting English Language Unity Act of 2005, H.R. 997, 109th Cong. (2005)). Other bills in the 109th Congress proposing to declare English the official language of the U.S. Government include H.R. 997, 109th Cong. (2005); the National Language Act of 2006, H.R. 4408, 109th Cong. (2005); and the National Language Act of 2006, S. 3828, 109th Cong. (2006).

A racial component is also present in modern nativism, as citizen organizations like Americans for Immigration Control (AIC) openly lobby for immigration policies favoring Western Europeans.⁹⁹

Some argue that the current English test is too easy, and all persons seeking American citizenship by naturalization should be able to speak English.¹⁰⁰ They assert that the current tests are “notoriously simple to pass,”¹⁰¹ pointing to a study where many newly-naturalized citizens admitted they could not speak English,¹⁰² and contend that the tests are inefficient in “facilitating the assimilation of naturalized citizens, notwithstanding the intent and desires of the American people.”¹⁰³

Those who feel the current language ability requirement is too relaxed argue that the United States should follow the growing trend in many European countries to increase language requirements for new immigrants.¹⁰⁴ Not only must applicants for naturalization demonstrate proficiency in the language of their host country, but legal residents are often also required to sign a contract of integration, in which they promise to learn the language.¹⁰⁵ In the Netherlands, learning the host language is required even *prior* to entering the country as a newly admitted long-term resident.¹⁰⁶ Furthermore, legal immigrants face

99. Feagin, *supra* note 25, at 35.

100. William J. Olson & Alan Woll, *An Historical Examination of the English Literacy Requirements in the Naturalization of Aliens*, One Nation Policy Paper Series, Feb. 2002, at 1, 8.

101. *Id.* at 8.

102. *Id.* (citing Peter H. Schuck, *Immigration at the Turn of the New Century*, 33 CASE W. RES. J. INT’L L. 1, 9 (2001)).

103. *Id.* at 10.

104. See generally *Bienvenue au Sénat, La formation des étrangers à la langue du pays d’accueil* [Host Language Training for Foreigners] (Sept. 2005) (Fr.), <http://www.senat.fr/lc/lc150/lc150.html> [hereinafter *Host Language*]. “The obligations imposed on the foreigners have seemed to build up in the last few years.” *Id.* at 9.

105. *Id.* at 5, 7.

106. *Id.* at 38-39; see also Christian Joppke, *Immigrants and Civic Integration in Western Europe*, Monograph, in INSTITUTE FOR RESEARCH ON PUBLIC POLICY, 1, 8 (June 2006) (noting that newcomers to the Netherlands are required to enroll in civics and language courses before entry or face potential denial of permanent legal residence permits); but see *Host Language*, *supra* note 104, at 2 *The Netherlands* (allowing new permanent residence a ten week period to demonstrate their knowl-

stringent sanctions when they do not comply with the contract, including fines, revocation of welfare benefits, inability to renew long-term stay permits, and inability to apply for naturalization.¹⁰⁷ However, some scholars believe that the English language requirement is outdated and unnecessary, and have proposed changes to modify the requirement or eliminate it completely.

B. Current Scholarship Questioning the English Language Requirement

Scholars have questioned the need for an English language requirement, advocating its modification or elimination for naturalization. Dora Kostakopoulou, Professor at the University of Manchester, proposed a “civic registration” model of naturalization in Great Britain, which would require only a two-year residency period and an absence of criminal record in order to be naturalized.¹⁰⁸ Although Kostakopoulou recognizes that “fluency in the host language increases employment opportunities and facilitates social incorporation,”¹⁰⁹ she argues “newcomers with no (or very basic) knowledge of the host language have contributed effectively in the public life, in the workplace, and society.”¹¹⁰ Indeed, she indicates that political information is available in multilingual sources.¹¹¹

edge of the language once they arrive in the Netherlands).

107. Host Language, *supra* note 104, 8-9, 13, 19, 22.

108. Dora Kostakopoulou, *Thick, Thin, and Thinner Patriotisms: Is This All There Is?*, 26 OXFORD J. LEGAL STUD. 73, 93-95 (2006).

109. *Id.* at 100.

110. *Id.* at 99.

111. *Id.* at 100. Interestingly, an alternative to eliminate political disenfranchisement of non-English speaking immigrants is to allow non-citizens to vote, a practice established in twenty countries and which would not be prohibited by the U.S. Constitution. See Elise Brozovich, *Prospects for Democratic Change: Non-Citizen Suffrage in America*, 23 HAMLIN J. PUB. L. & POL’Y 403, 404-05 (2002) (discussing two views of the constitutionality of alien suffrage—that it is constitutionally permissible and that it is constitutionally mandatory); Raskin, *supra* note 4, at 1441-67 (arguing that localities should allow lawfully present adult residents the right to vote in local elections). Professor Legomsky notes that lawful permanent residents “have a stake in the community and the nation in which they live, are affected by the decisions of government, and as residents, are familiar with the affairs of their communities.” Stephen H. Legomsky, *Why Citizenship?*, 35 VA. J. INT’L L. 279, 288 (1994).

350 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL [Vol. 37]

Professor Peter J. Spiro also questions the English language requirement, and finds it “neither necessary nor appropriate in the contemporary context.”¹¹² Spiro justifies this view by stating that most applicants would probably learn English at some point even if a formal requirement did not exist.¹¹³ He also argues that non-English speaking citizens can participate politically in American society because non-English media in print, broadcast, and the internet are widely available. These channels give the individuals access to allow them to make informed political decisions.¹¹⁴ Moreover, non-English speaking citizens have access to ballots in foreign languages and thus are not barred from voting under the Voting Rights Act.¹¹⁵

Professor Angela McCaffrey proposes waiving the English requirement for naturalization for those who have been legal permanent residents for five years and who are over fifty years old.¹¹⁶ She supports this expansion to the current age-residency waiver by thoroughly documenting the difficulties faced by the elderly in learning a second language, including linguistic, physiological, psychological, and social barriers.¹¹⁷ In addition, this waiver would “positively impact the goal of the U.S. Citizenship and Immigration Services (USCIS) to foster family reunification.”¹¹⁸ The English language requirement, as a proxy for citizenship, is imperfect, but eliminating it altogether would probably generate such a public outcry that it is politically unfeasible. A new waiver could realistically be contemplated to diminish the requirement’s discriminatory effect.

112. Spiro, *supra* note 16, at 489.

113. *Id.* at 497.

114. *Id.* at 495-96.

115. *Id.* at 496. Ballots must be available in foreign languages where there are non-English speaking minorities. *Id.*

116. McCaffrey, *supra* note 21, at 497-98.

117. *Id.* at 526-36.

118. *Id.* at 500.

V. A NEW WAIVER BASED ON COMPLETING AN ENGLISH LANGUAGE COURSE

A. *Basis for the Proposed Waiver*

The proposed language instruction waiver is based on a provision of the Immigration Reform and Control Act of 1986 (IRCA), which required that undocumented immigrants who wished to become legal permanent residents demonstrate either a minimal understanding of ordinary English, *or* a satisfactory pursuit of a course of study to achieve such an understanding of English.¹¹⁹ Similarly, many European countries offer a combination of mandatory and voluntary language programs to legal permanent residents, which could serve as a model for the proposed waiver.¹²⁰

In addition, a hint of this proposed waiver appeared in a hypothetical reform of the naturalization process, where naturalization applicants might be eligible for a waiver as an alternative to the standardized English and civics tests by “attending an English as a second language course and a history and political science course at facilities approved by the INS.”¹²¹

Although naturalization criteria include knowing English, the federal government generally provides no formal access to English language training.¹²² Local governments and voluntary organizations, however, may offer classes for nonnative speakers.¹²³ The language instruction waiver would target legal permanent residents who are willing to learn English, but are unable to learn it and do not qualify for disability or age-residency waivers.

119. Immigration Reform and Control Act [IRCA], Pub.L. 99-603, 100 Stat. 3359 (1986) (codified as amended in scattered sections of 8 U.S.C.) at 8 U.S.C. § 1255a(b)(1)(D)(i)(I-II).

120. *See generally* Host Language, *supra* note 104. A crucial difference between some European models and the proposed waiver is that many European programs are mandatory. *Id.* at 7-8.

121. Arnold Rochvarg, *In Defense of Naturalization Reform*, 10 GEO. IMMIGR. L.J. 43, 49 (1996).

122. The Office of Refugee Resettlement has provided language and job training as well as cash payments to Cuban and Vietnamese refugees in order to facilitate the transition into American society. JAMES P. LYNCH & RITA J. SIMON, *IMMIGRATION THE WORLD OVER: STATUTES, POLICIES, AND PRACTICES* 218 (2003).

123. *Id.* at 217.

There is little available data on people who would otherwise qualify for naturalization *but for* the English language requirement; however, it is known that the language requirement is an obstacle for some immigrants.¹²⁴ In fact, the language requirement could actually be “the most formidable obstacle to the acquisition of citizenship.”¹²⁵ According to the 2002 Current Population Survey (CPS), about 7.9 million of the 11.3 million legal [permanent residents] in the United States, or seventy percent, are eligible to naturalize.¹²⁶ However, approximately sixty percent of immigrants eligible for naturalization have limited proficiency in English and forty percent report they speak English “not well” or “not at all,” and would thus fail to satisfy the English language requirement.¹²⁷ Moreover, a case study on naturalization found that “one-third of all denials are attributable to failure on the English or civics test.”¹²⁸ Despite existing waivers, the current English exam is therefore keeping a certain number of otherwise qualified applicants from becoming U.S. citizens and from obtaining the privileges and obligations that accompany citizenship. An alternative method to satisfy the English language requirement would equally serve the official policies sustaining the requirement. The waiver would further applicants’ contribution and interaction in the community, and lead to greater democratic political participation overall. This

124. T. Alexander Aleinikoff, *Between Principles and Politics: U.S. Citizenship Policy*, in FROM MIGRANTS TO CITIZENS 119, 130 (T. Alexander Aleinikoff & Douglas Klusmeyer eds., 2000). Other reasons for low naturalization rates include: (1) most benefits available to citizens are also available to legal permanent residents; (2) children born in the United States are citizens, so legal permanent residents do not have to naturalize to confer citizenship to their U.S.-born children; and (3) affective ties to the home country may make it difficult to take the oath, which requires renunciation of other allegiances. *Id.*

125. Spiro, *supra* note 16, at 489.

126. Margon, *supra* note 3. For a list of current legal immigrants eligible for naturalization, visit Department of Homeland Security Website, <http://www.dhs.gov/ximgtn/statistics/publications/index.shtm> (last visited Feb. 24, 2007).

127. Margon, *supra* note 3; see also Michael Fix, Jeffrey S. Passel, & Kenneth Sucher, *Trends in Naturalization*, Urban Institute, Immigration Studies Program, Sept. 2003 at 4. Some naturalization applicants may not be literate in their native language, let alone in English. See Paul Johnston, *Citizenship Work: The Way to Go in Naturalization Assistance*, Central Coast Citizenship Project, Apr. 1998, at 4.

128. Spiro, *supra* note 16, at 486 n.35, quoted in McCaffrey, *supra* note 21, at 546.

would reduce the large number of lawful permanent residents who are unable to vote or serve on juries.¹²⁹

B. Proposed Waiver: Implementation, Benefits, and Concerns

First, in light of movements such as Official English,¹³⁰ the proposed waiver is more politically feasible than a blanket waiver, such as the one advocated by Professor McCaffrey,¹³¹ because it requires some effort on the immigrants' part to benefit from the waiver, as they must take a class in order to be covered by the proposed waiver. The curriculum would foster political participation by stressing the importance of voting and jury duty, in addition to other principles of American justice. By assisting legal permanent residents in becoming citizens, democracy in general would benefit. The program would also assist applicants in assimilating into their communities by teaching them English in a meaningful context. The program may include tailoring English learning to the applicants' employment and daily life concerns, rather than encouraging thoughtless memorization of sentences like: "The boy threw the ball." Such a program could provide opportunities to use creative teaching techniques, such as role-playing, to teach individuals how to use their English skills. Role-plays may include scenarios where the students use their English as jurors in a mock trial or customers in a grocery store. Through this "[i]ntegrated or contextual learning" method, applicants would learn skills in context with their jobs and daily life, which would fulfill the underlying goals of the requirement.¹³² Satisfying the English language requirement for naturalization would evolve from a mindless memorization of specific sentences into a meaningful learning experience.

Moreover, the waiver would also provide an opportunity to develop a sense of civic responsibility for American instructors, thus furthering official policy goals to give new meaning to citizenship and

129. WELCOME TO THE UNITED STATES: A GUIDE FOR NEW IMMIGRANTS, *supra* note 4 at 90-91 (stating that citizenship is required for the right to vote in federal elections or to serve on a jury).

130. See *supra* note 91 and accompanying text.

131. See McCaffrey, *supra* note 21, at 542.

132. See Johnston, *supra* note 127, at 6.

354 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL [Vol. 37]

promote public awareness of the rights and responsibilities citizenship entails.¹³³

The waiver would require establishing an infrastructure to offer language training to interested applicants. However, some existing mechanisms could be used to offer the English classes required by the waiver. The Department of Homeland Security has the ability to certify currently existing language institutes and universities as language instructors,¹³⁴ similar to the way it already certifies qualifying physicians to perform the required medical examinations for applicants who adjust their status and become legal permanent residents.¹³⁵ Creating a standard curriculum and giving instructors clear criteria with which they could evaluate the students would also address potential concerns regarding standardization and uniformity.

Financing for the language training could be addressed in a variety of ways. A combination of resources can be pooled to finance the classes. For example, applicants may be required to contribute a fee. Additionally, qualified high school and college students could volunteer or obtain class credit for teaching the program after undergoing adequate training.

European countries have varied approaches to finance language classes for their immigrants; most combine funding from the federal government and immigrants.¹³⁶ In Germany, the federal government funds the classes but immigrants contribute one euro per hour of instruction for the course, which lasts 630 hours, and one hundred euros are payable in advance.¹³⁷ In Austria, both the federal government and local associations and collectivities furnish the cost, and employers contribute as well if the immigrant is salaried, while immigrants in Denmark who take optional language classes must contribute between 67 and 670 euros.¹³⁸

133. See Aguirre, *supra* note 6.

134. See 42 C.F.R. § 34.2(c) (2002).

135. See *id.* A civil surgeon is defined as “[a] physician, with not less than 4 years professional experience, selected by the District Director of INS to conduct medical examinations of aliens in the United States who are applying for adjustment of status to permanent residence or who are required by the INS to have a medical examination.” *Id.*

136. Host Language, *supra* note 104.

137. *Id.*

138. *Id.*

Opponents may argue that this waiver would encourage potential naturalization applicants not to learn English and assimilate. As discussed above, inability to speak and read English is a significant barrier for naturalization and meaningful political participation for an indeterminate number of first-generation immigrants who have acquired lawful permanent residence status and who would otherwise be eligible for naturalization.¹³⁹ However, empirical studies have shown that Latino immigrants' rate of English acquisition over *several* generations is the same as immigrants in the past.¹⁴⁰ Third generation immigrants generally speak English as their primary language.¹⁴¹ "Traditionally, the immigrant's pathway to mastering English has been a three-generation affair. The first generation retains a foreign tongue as its primary language; the second generation is bilingual; the third speaks English as its native language."¹⁴² The 2000 U.S. Census indicates a high degree of English proficiency in the United States overall, as ninety-six percent of all persons older than four believe that they speak English with competency.¹⁴³ However, knowing that their descendants will learn and dream in English is no solace for first-generation, often elderly immigrants, who are alienated from critical contribution to democracy for failing to acquire sufficient English proficiency.¹⁴⁴

The fact that the demand to learn English exceeds the availability of educational assistance shows that legal permanent residents are eager to learn English.¹⁴⁵ Between 1980 and 1998, the percentage of adults that enrolled as English as a Second Language (ESL) students has increased from seventeen percent to forty-eight percent.¹⁴⁶ In 2002, many ESL classes had waiting lists because they were unable to meet the demand for English instruction.¹⁴⁷ The English language re-

139. See LEGOMSKY, *supra* note 13, at 1282.

140. Hart, *supra* note 92, at 187.

141. Leonard, *supra* note 94, at 68.

142. *Id.*

143. *Id.* at 62.

144. See *e.g.*, Interview with Susana Torres, in Nogales, Ariz. (Aug. 14, 2006).

145. See Hart, *supra* note 92, at 187.

146. MICHAEL FIX, WENDY ZIMMERMAN, & JEFFREY S. PASSEL, *THE INTEGRATION OF IMMIGRANT FAMILIES IN THE UNITED STATES* 51 (Urban Institute, Immigration Studies Program 2001).

147. *ESL Education Helps Immigrants Integrate*, AM. IMMIGR. LAW FOUND

quirement is unlikely to disappear, but more should be done to assist legal permanent residents in acquiring proficiency. This point was made by Raul Gonzalez, Legislative Director of the National Council of La Raza, during a hearing to examine views on a proposal to make English the official language of the United States: “[I]t is fair to expect immigrants to integrate into American society and English language acquisition is a big part of that . . . but Congress hasn’t done enough so far to help people learn English.”¹⁴⁸

Recent public opinion surveys show Hispanic immigrants recognize the importance of learning English.¹⁴⁹ A study by the Pew Hispanic Center conducted in 2004 shows that Hispanics believe it is important to speak English: “The endorsement of the English language, both for immigrants and for their children, is strong among all Hispanics regardless of income, party affiliation, fluency in English or how long they have been living in the United States.”¹⁵⁰ Another study based on a national telephone survey of 1,002 foreign-born adults age eighteen or older who have been living in the United States since they were five years old revealed that eighty-five percent believe that it is difficult to “get a good job or do well in this country without learning English.”¹⁵¹

Moreover, legal permanent residents already have informal incentives to learn English. Indeed, “knowledge of English is essential to success in the economy, in education, and in society.”¹⁵² Therefore, enacting this waiver will not encourage legal permanent residents to avoid learning English. According to Angela McCaffrey, the greatest

(2002) available at http://www.aifl.org/ipc/policy_reports_2002_ESL.asp. See also Jacqueline L. Salmon, *English Lessons*, WASH. POST, June 13, 1999, at W11. In 2000-2001, 1.1 million adults were enrolled in English for Speakers of Other Languages [ESOL] classes. NAT’L. CENTER FOR ESL LITERACY, ADULT ENGLISH LANGUAGE INSTRUCTION IN THE 21ST CENTURY 7 (2003).

148. Raul Gonzalez, Legislative Director of the National Council of La Raza, in 83 No. 29 Interpreter Releases 1629, 1630 (July 2006).

149. See, e.g., *Fact Sheet: Hispanic Attitudes Toward Learning English* (Pew Hispanic Ctr.), June 7, 2006 at 1, available at <http://pewhispanic.org/factsheets/factsheet.php?FactsheetID=20>.

150. *Id.*

151. Steve Farkas, et al, *Now That I’m Here: What Immigrants Say About Life in the United States*, MIGRATION POL’Y INST. (May 2003) available at <http://www.migrationinformation.org/Feature/display.cfm?id=119>.

152. Perea, *supra* note 7, at 354.

incentive for learning English is how much easier it makes an individual's life in the United States.¹⁵³ Another major benefit of learning English is access to employment possibilities: "[I]t is generally accepted that the ability to speak English is a necessary job requirement for the majority of occupations in the United States."¹⁵⁴ The author refers here to the fact that employers favor English-speaking employees, especially in today's service-oriented society.¹⁵⁵ In addition, the fact that the English instruction would "ensure career advancement creates an irresistible incentive to master the language, if not to prefer it."¹⁵⁶

The rapid development of English-only workplace policies also provides a clear incentive to learn English. These rules enable employers to legally require employees to speak only English at work at certain times as long as the employer demonstrates a business necessity and gives notice to his employees of the circumstances and times when English is required and the consequences for not following the rule.¹⁵⁷ The United States Courts of Appeals for the Fifth¹⁵⁸ and Ninth¹⁵⁹ Circuits have upheld private employers' English-only rules as non-discriminatory under Title VII, although challenges to workplace rules have increased.¹⁶⁰

Concerns that immigrants would choose not to learn English should the waiver be implemented are unfounded because independent

153. McCaffrey, *supra* note 21, at 500.

154. Leonard, *supra* note 94, at 65.

155. LUCY TSE, WHY DON'T THEY LEARN ENGLISH? SEPARATING FACT FROM FALLACY IN THE U.S. LANGUAGE DEBATE 25 (2001).

156. Leonard, *supra* note 94, at 69.

157. Equal Employment Opportunity Comm'n, 29 C.F.R. § 1606.7(b)-(c) (2006). See generally Cristina M. Rodriguez, *Language and Participation*, 94 CAL. L. REV. 687, 754-58 (2006) (discussing the impact of the English-only workplace rule in a social context within the work environment and the judicial treatment of cases that challenge the rule).

158. See *Garcia v. Gloor*, 618 F.2d 264 (5th Cir. 1980). For a thoughtful analysis of English-only rules in the workplace and case law analysis, see Christopher David Ruiz Cameron, *How the Garcia Cousins Lost Their Accents: Understanding the Language of Title VII Decisions Approving English-Only Rules as the Product of Racial Dualism, Latino Invisibility, and Legal Indeterminacy*, 85 CAL. L. REV. 1347 (1997).

159. See *Garcia v. Spun Steak Co.*, 998 F.2d 1480 (9th Cir. 1993).

160. Carmel Sileo, *English-Only Lawsuits on the Rise*, 42 TRIAL 76 (Feb. 2006).

factors encourage immigrants to learn English, from a desire to better themselves socio-economically to the proliferation of English-only rules in the workplace.

VI. CONCLUSION

The English language requirement is officially shrouded in a desire to encourage immigrants to participate politically and assimilate in their communities. However, as a historical review of the requirement revealed, it has also served as a nativist instrument of exclusion to reject immigrants perceived to be undesirable and to respond to national security concerns and other threats to national identity. The requirement is not completely inflexible: Congress carved exemptions to the requirement relating to physical or mental disabilities, certain types of military service, and a combination of age and long-term residency in the United States.

The proposed waiver would provide access to citizenship and the important benefits it confers, including voting rights and the ability to sponsor qualifying relatives, to those who are imprisoned in their legal permanent residence status simply because they do not speak or write English and have trouble learning it. The existing age-residency waiver is insufficient because it disenfranchises citizens-to-be for excessively long waiting periods. Completing a language instruction program would satisfy the underlying rationales for the English language requirement: not only will it promote integration and assimilation, but it will also help develop a sense of duty of citizenship in the American instructors. Offering this flexible and more meaningful way to test the knowledge of English would keep potentially good citizens like Susana from being disenfranchised for decades by giving a concrete value to the time and effort spent in learning English.

Helene C. Colin^{*}

^{*} J.D. Candidate, California Western School of Law, 2008; B.A., Political Science, University of California, San Diego, 2004. My thanks to Professor Lilia Velasquez for providing inspiration for this Comment and to Professor Ruben J. Garcia for his insights and guidance. Thanks also to the *California Western International Law Journal* staff and editors for their hard work, and, of course, to my family for their love and support.